to that is awaited with interest. If anything can be inferred from the court's reasoning in *Atherton v. Atherton* and in the present case, it would seem that a bona fide domicil by a party plaintiff in any State would of itself confer jurisdiction. Public policy would seem to require that it should not be necessary for a plaintiff to continue or acquire a domicil in the State of the matrimonial domicil, in order to obtain a divorce that would be recognized in other States.

The present case is important in that it so clearly brings out the fact that in divorce proceedings domicil is the inherent element upon which jurisdiction must rest, whether the action is *ex parte* or *inter partes*. The authority of a court does not in such case depend on its jurisdiction over the parties, but on its jurisdiction over the subject matter, viz.: bona fide domicil. Domicil is the primary consideration; jurisdiction of the parties is only secondary. In matters of private concern, if both parties are willing to submit to a State's jurisdiction, its decree or judgment is binding and must be recognized as valid in all the States. But in divorce the State is an interested third party, being bound to guard the morals of its citizens. Consequently a State must waive its rights by some legislative enactment, in order to be concluded by the judgment of another State, which had no jurisdiction of the subject matter—domicil.

The English decisions, though in themselves they are not entirely harmonious, seem to be in conflict with the principal case. *Calwell v. Calwell,* 3 Swab. & T. 259-61; *Niboyet v. Niboyet,* 3 P. D. 52.

VESTED RIGHTS AS CONFERRED BY A FINAL DECREE FOR ALIMONY.

The nature of a decree for divorce and a permanent allowance of alimony is presented and conflicting opinions put forth in the case of *Livingston* v. *Livingston,* 66 N. E. 123, recently decided by the New York Court of Appeals. The case arose upon the following facts. In 1892 the wife obtained judgment of absolute divorce, including a permanent allowance of money to be paid in installments. No appeal was taken by the defendant from the decree; it reserved no power in the court to alter it; and no such power was conferred by the statute then in force. In 1901 the husband obtained from the same court an order reducing the alimony, on proof of a substantial change of circumstances. The order was granted under the supposed authority of c. 742, N. Y. Laws of 1900, amending Code Civ. Proc., sec. 1759, by allowing the court "at any time after final judgment, *whether heretofore or hereafter rendered,* to annul, vary or modify" the order of alimony. This statute, in so far as it applies to judgments entered before its enactment, the Appellate Division held to be unconstitutional, and reversed the order of reduction. By a majority of one, the Court of Appeals has sustained the ruling of the Appellate Division.

The constitutional provision said to be violated is that no person shall be deprived of property without due process of law. (N. Y. Const., art. 1, sec. 6.) The decision therefore involves the proposi-

tion that a final decree of divorce awarding alimony establishes vested property rights, and is so far like an ordinary final judgment or decree as to be beyond the reach of direct legislative power.

Just how far rights under an ordinary judgment may be affected by the legislature is not clearly settled. That judgments, as such, are not within the prohibition of the Federal Constitution against impairing the obligation of contracts has been determined by the final interpreter of that instrument. *Louisiana v. Mayor of New Orleans,* 109 U. S. 285; *Morley v. Lake Shore Ry.,* 146 U. S. 162. But they are protected by another clause of the Federal and State Constitutions, i. e., that citizens shall not be deprived of property without due process of law. Judgments ordinarily are property. In *Gilman v. Tucker,* 128 N. Y. 190, which involved a judgment declaring void the title to certain real estate purchased at execution sale, the court said, "We must bear in mind that a judgment has been rendered, and the rights flowing from it have passed beyond the legislative power, either directly or indirectly, to reach or destroy. After adjudication the fruits of the judgment become rights of property, vested and beyond the reach of legislative power." It is sometimes said that the legislature may interfere with the judgment by statutes affecting the remedy. But this is true only with important qualifications. For example, statutes of limitation may be changed at will, but a bar already complete cannot be removed, and no existing claims can be affected unless a reasonable time is allowed for bringing actions on them. *Bigelow v. Bemis,* 2 Allen 496; *Wheeler v. Jackson,* 137 U. S. 245. The right of appeal may be altered, but an act conferring a right of appeal from a judgment which, by existing law, has become final, is unconstitutional. *Germ. Sav. Bank v. Village of Suspension Bridge,* 159 N. Y. 362. The general rule as to vacating judgments is that a statute may declare what judgments shall in future be subject to be vacated, or when, or how long, or for what causes, but it cannot apply retrospectively to a judgment already rendered and which had become final and unalterable by the court before its passage. Such an act would be unconstitutional both as impairing vested rights and as an unwarranted invasion of the province of the judicial department. *Black on Judgments* (2d ed.) sec. 298; *Bronson v. Schulten,* 104 U. S. 410.

The question of applying this rule in alimony cases does not frequently arise, for a number of reasons. The whole subject of divorce in this country is minutely regulated by statutes and the courts have no common law jurisdiction. These statutes usually provide that the amount of alimony may be changed from time to time after the term, and such statutes, of course, in effect enter into the decree. In the absence of statute the decree may, and probably usually does, reserve the right to re-adjust the alimony at any time to changed circumstances. Where there is neither a statute conferring the power nor a reservation in the decree it is generally held that an award of permanent alimony in a decree *a vinculo* cannot be altered after the term or the time in which a new trial may be had.

2 *Am. &Eng. Enc. Law,* 2d ed., 136. But these considerations go to the power of the court or the construction of a statute rather than to the power of the legislature.

It would seem that upon its face a decree awarding alimony, which had passed beyond the power of the courts, was also beyond the power of the legislature as much as is an ordinary judgment. It is the judicial determination of the amount required to be paid each year by a person upon whom there is by law a liability and in discharge of that liability. *Walker v. Walker,* 155 N. Y. 77. While the analogy cannot be pressed too far, there is a striking similarity between it and an obligation to pay a sum of money each year in consdieration of the transfer to the obligor of a piece of property. It is difficult to see why both do not equally vest property rights. During the existence of the marriage relation the wife had an absolute right to support, and the husband was under a corresponding obligation. The State prescribes that certain misconduct of the husband is a sufficiently serious breach of the marriage contract to entitle the wife to a divorce, i. e., a rescission. And, as the injured party, entitled not only to release from the relation but to such compensation as the law can practicably give, she receives instead of her prior right to support as a wife, which is now wholly cut off, the right to a liquidated amount payable according to the decree. The objection urged by the dissenting judges that this provision is not property because it lacks such incidents as capacity to be sold or transferred or bequeathed by will or pass by intestacy is partly unfounded and partly no objection at all. "The now discovert *feme* may make contracts relating to her alimony the same as to any other property interest." *Preston v. Williams,* 81 Ill. 176; *Blake v. Blake,* 7 Iowa 46. In these cases contracts providing for the release of the husband from the obligation fixed in the judgment, were enforced. A life estate in real property cannot pass by will, intestacy, etc., but no one would deny that it is a property right. So, too, alimony, even in arrears, is not a debt provable under the Bankruptcy Act, or barred by a discharge. *Audubon v. Shufeldt,* 181 U. S. 575. But neither are judgments based on rights arising from malicious torts, but such judgments none the less are evidence of rights of property.

A more serious objection is that the decision seems to deny the plenary power of the legislature with respect to marriage, divorce and alimony. But it is believed that nothing within the proper and natural scope of this power is called in question at all. The legislature may prescribe how the marriage contract may be made, may regulate the relation while it exists and the conditions on which it may be dissolved. Outside of these limits its power does not extend. It cannot compel parties to enter the marriage relation in the first place, or to apply for a divorce however outrageous the conduct of either, or to return to that relation after a full, fair trial on the merits and final judgment of absolute divorce. The difference in the power of the legislature to confer authority upon the courts where alimony is decreed with power reserved in the decree or by statute,

and where there is no reservation, is parallel to the difference between its power in the case of a separation, where a relation still exists over which jurisdiction may be assumed, and the case of an absolute divorce, where the relation which has conferred jurisdiction disappears entirely.

The circumstance that apparent injustice is wrought in this case (the woman has remarried, and her husband is able and willing to support her, while her former husband's present income barely exceeds the amount of alimony he has to pay to her) is merely another instance of what must sometimes occur in the application of principles established for the general good, and affords no argument against the conclusion reached by the court, which is believed to be sound.